

CONSIDERED: /J.V.C./ (04/07/2010)

PATENT
04116-P0001B GSW/TMO/GDM**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant	Walter Jones
Application No. 10/767,131	Filing Date: January 29, 2004
Title of Application:	Tablecloth Covering And Method of Covering And Skirting A Table
Confirmation No. 4367	Art Unit: 3637
Examiner	Jose V. Chen

Mail Stop Appeal Brief - Patents
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

Reply Brief Under 37 CFR §41.41

Dear Sir:

Having received the Examiner's Answer, Appellant submits this Reply Brief for the above-captioned application pursuant to 37 C.F.R. §41.41 as follows.

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Response to Argument

Though the Examiner has continued to argue for the combination of two references, the fact remains that these references cannot be physically combined to produce the claimed invention. The independent claims of the present invention each require the limitation of, "to be fitted about the plurality of sides of the tabletop and hold the table cover on the tabletop...wherein the table cover is monolithic and consists essentially of a single piece of thin vinyl." The cited references of U.S. Patent No. 5,452,729 to Bergsbaken et al. (hereinafter "Bergsbaken") and U.S. Patent No. 4,095,300 to Ruben (hereinafter "Ruben") cannot be physically combined to produce the above limitation.

The Examiner asserts that,

the only difference being that the connection structure is a separate piece of material. However, the patent to Ruben teaches the use of providing a folded cover with attaching structure as a unitary one piece member. It would have been obvious at the time of the invention to modify the structure of Bergsbaken et al to include a cover of a unitary construction, as taught by Ruben since such structures are conventional alternative structures used in the same intended purpose, and would have been reasonably predictable, thereby providing structure as claimed.

(See 02/01/10 Examiner's Answer p. 4). Appellant respectfully disagrees.

"Office personnel should consider all rebuttal evidence that is timely presented by the applicants when reevaluating any obviousness determination... For example, in the case of a claim to a combination, applicants may submit evidence or argument to

demonstrate that: (A) one of ordinary skill in the art could not have combined the claimed elements by known methods (e.g., due to technological difficulties);" (*See* MPEP 2141 (V)). "Obviousness does not require absolute predictability, however, at least some degree of predictability is required. Evidence showing there was no reasonable expectation of success may support a conclusion of nonobviousness. *In re Rinehart*, 531 F.2d 1048, 189 USPQ 143 (CCPA 1976)." (*See* MPEP 2143.02 (II)). In the present case, Appellant respectfully submits that Bergsbaken cannot be modified using the teaching of Ruben to produce the claimed invention, and as such, was not obvious to one of ordinary skill in the art to combine the references.

As can be seen from Figure 1 of Bergsbaken, in order to form the interior corners of the t shape, slits 34 and 36 are cut into the material. This allows sides 28, 30, 16 and 18 to be folded to form the t shape. Bergsbaken then adds in a separate piece of material, 48, to fill in the gap created by slits 34 and 36. It is however, physically impossible to form the interior corners of the t shape without the inclusion of additional material and still maintain a fitted tabletop cover. After slits 34 and 36 have been created. Edges 16, 18, 28 and 30 are folded. As can be seen from Figure 7, after edges 18 and 30 are folded, a gap is created between edges 44 and 46. This necessitates the additional material to fill in the gap formed by the slit. However, even if one were to not use a slit 36, there is no physically possible way to fold any of the edges such that the a fitted continuous side edge is created. Appellant has attempted to combine Bergsbaken with Ruben, applying the unitary construction of Ruben in order to create a t shape cover with a continuous side edge around the entirety of the t shape.

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Appellant has been unable to produce a t shape with a continuous side edge without the use of additional material. Every attempt to modify an item similar to a surgical drape to form a t shape using a unitary piece of material has resulted in a non-fitted cover. This is due in part because any attempt to fold the material to produce a corner necessarily pulls on the sides of the t-shape, not allowing for a fitted, continuous side to be formed. Therefore, Appellants respectfully submits that Bergsbaken cannot be modified with the teaching of Ruben to produce the above recitation of claim 1.

For the foregoing reasons, Appellant respectfully submits that the claimed invention embodied in each of claims 1-7, 9 and 10 is patentable over the cited prior art. As such, Appellant respectfully requests that the rejections of each of claims 1-7, 9 and 10 be reversed.

Respectfully submitted,

April 01, 2010

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